Managing your own Affairs

Part of the Community Management Series

Manitoba
Aboriginal and
Northern Affairs

MANAGING YOUR OWN AFFAIRS

I am pleased to provide you with a copy of the Aboriginal and Northern Affairs handbook on the topic of *Managing Your Own Affairs.*

This handbook has been prepared to assist residents and community councils who may be interested in managing their own affairs through incorporation. Incorporation is a major step, and both residents and community councils have concerns and questions about this process.

The handbook gives a general overview of the incorporation process and takes you through the process from petition to legislative requirements. The department fully supports community discussion about this important step. If you need any further information, please contact the staff at Community Support Services or Inter-Regional Services, listed in the handbook.

Thank you for your interest in managing your own affairs.

Yours sincerely,

Eric Robinson,
Minister

101-02690/

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INCORPORATION

DEFINITION

Incorporation is the transformation of a Community Council into a legal entity under the Northern Affairs Act.

COMMENT

Incorporation is the final stage in the legal development of local government under *The Northern Affairs Act*. It involves the creation of a separate legal entity, similar to a municipality, by a Cabinet Order-in-Council, including the incorporation regulation.

COMMUNITY CONCERNS

BENEFITS AND OPPORTUNITIES

- An incorporated Northern Affairs community has the authority and the opportunity to sustain its future, ensuring that it meets the needs of the present without compromising the ability of future generations to meet their own needs.
- An incorporated community operates independently within the powers and responsibilities authorized in *The Northern Affairs Act* and can tailor future development and services for its own needs.
- An incorporated community can examine all aspects of community life in an integrated way, considering the whole community.

  Economic - The aim is to stimulate business, generate wealth and help everyone find productive work. Sustainable economic development includes small business, new ideas, co-operatives, credit unions, community enterprise, partnerships, encouraging entrepreneurs and doing the work that needs to be done locally. Economic growth is not sustainable when people's welfare is jeopardized or environmental limits are exceeded.

Social - The aim is to ensure a quality of life for everyone living in the community. A healthy community, for example, is based on adequate housing, education, health care and recreation facilities. Equally important are the activities, services and relationships supporting spiritual, cultural and emotional needs, both individually and collectively.

Environmental - The aim is to manage natural resources and protect the physical environment so that future generations will not be denied the benefits and pleasures of a healthy, diverse ecosystem.

Organizational - The aim is to find new ways of working together and make wise decisions. Organizational development is based on equal opportunity, strong leadership, democratic principles and increasing citizen involvement.

NOTE:
The thrust of the department during the past 25 years has been to develop the organizational structure of Northern Affairs communities. Incorporation will enable communities to work on the other three areas (economy, social and environment) to complete the holistic approach.

- An incorporated community has access to funding arrangements, similar to those under Self-Reliance, providing the basis for long-term, sustainable operations, a maintenance budget and:
  - Legal Fees
  - Equipment Replacement
  - Audit Costs
  - Insurance Costs
  - Emergency Repairs

- Council can obtain other capital resources through the departmental capital allocation process. In addition, an incorporated community may apply directly to other departments for funding under those departments' municipal support programs.

RESPONSIBILITIES

- The council of an incorporated community continues to be responsible to the community residents for the achievements of the community.

- Each council shall remit all reports requested by the Minister as outlined in *The Northern Affairs Act*, including but not limited to the following:
  - Community management plan by January 1.
  - Preparation of the annual estimates by April 30.
  - Year-end financial statement of expenditures and revenues before April 30.

- A minimum of a "qualified" audit status is to be maintained. A copy of the annual audit report is to be sent to the Minister through the Regional Office by December 31 or within 30 days of receiving it from the audit firm, whichever is earlier.

RECOMMENDED COMMUNITY INCORPORATION CRITERIA

COMMUNITY BASE CRITERIA

- Population of 75, plus or minus 10% residents ("residents" as defined in Manitoba Regulation 43/93). Population figure used will be the latest official census.

ADMINISTRATIVE ABILITY

Competent administration of local affairs is a key component for incorporation. The requirements are:

- One or more years of Self-Administration status.
- Demonstrated management and decision-making skills, shown by having at least two years of qualified audit status or better, indicating that proper accounting principles have been followed.
- Previous Monitoring Report deficiencies should have been corrected within six months from date of notice.
- Sufficiently trained administrative staff, or a plan in place to ensure staff are trained to appropriate qualifications.
- Balanced operation and maintenance budgets. Communities that experienced deficits in the past three years must have recovered the deficit in a two-year period.

- Have in place bylaws covering council organization, procedures, financial procedures, and establishment of funding reserves.

- Agree by resolution to work within the terms of the Incorporation Agreement, which outlines the level of service to be provided by the community, as negotiated with the Department.

- Have in place staff supervision, performance review procedures and designated staff supervisors.

PROGRAM DELIVERY CAPABILITY

- Proven record of operating community services; i.e. fire and emergency services, community constable services and recreation services, based on achieving community-set performance goals.

- Developed and maintained infrastructure and municipal services in the community.

- Public works/water and waste water employees trained to operate and maintain the existing infrastructure according to regulations.

- Planned, estimated, tendered and completed capital projects within 5% of the estimated costs and within estimated time frames.

- Demonstrate the intent to continue the development process by:
  - establishing community land use plans bylaw within two years of incorporation if not already in place; and.
  - establishing administrative procedures, acceptable to the Department, for the disposition of Crown Land within the community boundary.

DEPARTMENT ROLE

With the community council taking on more fully the role of a local authority in the community, the role of the Department of Aboriginal and Northern Affairs may be outlined as follows:

ADVICE AND CONSULTATION

- The council may consult with the Department about administrative, financial management, accounting, organization and operational activities. This advice may be provided at no cost to the community.
- The Council may contract with the Department for provision of specific services, such as tax administration, upon terms that both agree to, while the council develops its own resources to operate that service.
- The Department may provide technical advice, including standards, relating to any services, programs or projects undertaken by the council.
- The Department may provide advice in the development of council policies to ensure that they do not contravene government legislation or policies.

PROVISION OF FINANCIAL SUPPORT

- The Department will provide funds in one lump sum in each fiscal year (April 1 to March 31), similar to the arrangements made under the Self-Reliance Agreement, in amounts approved for operations and maintenance (O & M) and capital reserve funds.

POWERS OF AN INCORPORATED COMMUNITY COUNCIL

An incorporated community council has powers granted to it under *The Northern Affairs Act* by the incorporating regulation. These include many of the powers granted to municipalities. Once a corporation has been created, it is a legal entity separate and distinct from the Minister. Accordingly, an incorporated community council does not merely advise the Minister, but is in a position to make its own decisions.

The powers of an incorporated community council include:

1 It may acquire in any manner, hold and alienate, both real and personal property for the purpose for which the incorporated community is constituted.

2 By its name, it and its successors have perpetual succession.

3 It may sue and be sued, implead and be impleaded, answer and be answered unto, in all courts and in all actions, causes, proceedings, and suits whatsoever.

4 It shall have a common seal and may alter or change its seal at its pleasure.

5 It may contract and be contracted within its corporate name, and may become a party to any contract or agreement in the management of its business.

6 It may enter into contracts or agreements with anyone for land development and provision of municipal services.

7 It may make agreements with any other incorporated community, municipality, or with any other person to conduct municipal activities and services.

8 It may enter into an agreement with:
   a) The Government or any Government agency, or

b) A school district, division or area, under which the community undertakes to perform work or functions, provide services, or use or allow the use of a building or facility on terms and conditions set out in the agreement.

9 It may enter into an agreement with any school district, division or area to jointly construct, own, operate, use and maintain public works or buildings.

10 It has the right and responsibility to maintain all property, assets and liabilities in which the council had an interest before incorporation.

11 It may pass bylaws in accordance with *The Northern Affairs Act*.

12 It may levy taxes on taxable property.

13 It may enter into agreements with the federal government, province or another municipality for policing services or policing facilities.

14 The provincial Government may make regulations authorizing the council to pass bylaws for acquiring and holding land for nuisance grounds, disposal areas, landfill sites and the like.

15 It may pass bylaws respecting a scavenging system providing persons and equipment to do the actual work, and levying special taxes to pay for them.

16 It may pass bylaws respecting utilities, including acquisition, charges and payments.

17 A council may acquire, use, lease and dispose of personal property and acquire, use and lease real property.

18 A council may develop, redevelop and service land it acquires.

19 A council may

a) establish, acquire, own, operate and manage a commercial or industrial business or activity in Northern Manitoba, on its own, with a Government agency, or another incorporated council or any one or more of them;

b) may acquire, develop, redevelop, use or lease real and personal property in connection with the business;

c) may make an agreement with a Government agency or another incorporated council for them to operate a business.

d) It may mortgage property in connection with the business.

e) It may dispose of property acquired to operate a business.

20. It may enter into agreements to secure housing for the elderly, subject to *The Elderly and Infirm Persons Housing Act.*

21. It may enter into agreement with the Minister responsible for Housing to operate a housing authority under *The Housing and Renewal Corporation Act.*

The powers of an incorporated community council are subject to certain limits and added responsibility. For example, a person may appeal to the Minister where a council has refused to grant a licence or permit (Section 87). With respect to finances, a council must be responsible, must make annual estimates and pass a tax levy bylaw. These obligations and limitations are required by legislation such as *The Northern Affairs Act.*

THE PROCESS OF INCORPORATION

OVERVIEW

To transform your existing community into an incorporated community, a streamlined process is provided. The process involves the following basic steps:

1. Present a petition to the Minister of Northern Affairs that includes:
   - description of the community boundary or map;
   - signatures of at least 15 electors of the community;
   - a covering letter from council.

2. The Minister gives notice to the residents living in the area that may be described in the proposed boundary that he has received a petition and sets a date for persons to respond to it.

3. Based on the results of the presentation, the Minister may or may not proceed to incorporate the community.

Before the formal process, departmental staff are available to help council make community residents aware of the impact of incorporation. This could involve community meeting(s) at which information would be presented on:

- The changes to the organizational structure (which are negligible);
- A description of the incorporated council's authority and responsibility;
- An explanation of the funding arrangement terms and conditions;
- The involvement of residents in the local decision-making process.

Even after a formal petition has been submitted, departmental staff are available to help council make information available to the residents, on request.

Some councils may wish to have a referendum. A council can do this through its election officers. Department staff may assist the council in the wording of a referendum ballot, if desired.

THE FORMAL PROCESS (legislation)

The provisions of *The Northern Affairs Act* are as follows:

Area or community may be incorporated.
21(1) On receipt of a petition signed by not fewer than 15 adult residents of an area or community, the minister may recommend to the Lieutenant Governor in Council that the residents be incorporated as an Incorporated Community.
NOTE: A sample of a petition is included in Appendix A

Content of Petition
21(2) The petition referred to in subsection 21(1)

(a) and the signatures on it, shall be verified by the statutory declaration of a person who has knowledge of the facts; and

(b) shall describe the proposed boundaries of the area or community that the petition proposes be incorporated by reference to a survey, landmarks, photogrammetric drawings or maps.

Notice of petition
21(3) Prior to making the recommendation referred to in subsection 21(1), the minister shall direct that notice of the petition be given to the adult residents of the area or community referred to in clause 21(2)(b), in such manner as the minister considers to be appropriate.

Content of notice
21(4) The notice referred to in subsection 21(3) shall describe the proposed boundaries of the area or community that the petition proposes be incorporated, and shall invite any person objecting to the petition or the proposed incorporation to submit his or her objection in writing, with a brief statement of the reasons for the objection, to the minister by a date specified by the minister and set out in the notice.

Minister may initiate consultation re: Incorporation
21.1(1)Where the minister considers it in the best interests of the residents of an area or community to incorporate the area or community, the minister may, in such manner as the minister considers appropriate.

(a) give notice to the adult residents of the area or community of the possibility of his or her recommending its incorporation; and

(b) consult with the adult residents of the area or community respecting incorporation.

Content of notice
21.1(2)The notice referred to in clause (1)(a) must

(a) describe the probable boundaries of the area of community if it were to be incorporated; and

(b) invite any person objecting to incorporation to submit his or her objection in writing, with a brief statement of the person's reasons for objecting, to the minister before a date specified in the notice.

Change of boundaries described in notice
21.1(3)If at any time the minister determines that the boundaries described in the notice should be changed to an extent that he or she considers significant, the minister shall consult with the adult residents within the boundaries described in the notice and within the proposed boundaries in such manner as he or she considers appropriate.

Minister may recommend incorporation
21.1(4)After consulting with the adult residents and considering any objections to incorporation, the minister may recommend to the Lieutenant Governor in council that the area or community be incorporated.

Regulation to incorporate
22(1) The Lieutenant Governor in Council may incorporate an area or community by regulation.

Requirements of regulation
22(2) A regulation under subsection (1) shall

(a) describe the boundaries of the incorporated community and give it a name;

(b) specify whether the mayor is to be elected by the electors of the incorporated community or by the members of the incorporated community council; and

(c) specify the number of members of the incorporated community council
(1) including the mayor, if the mayor is to be elected by the council from its members, or

(2) in addition to the mayor if the mayor is to be elected by the electors.

Additional regulation-making powers
22(3) A regulation made under subjection (1) may

(a) provide
(1) for the election of the first members of an incorporated community council, or

(2) that the members of a community council or a local committee in the area to be included in the boundaries of the incorporated community constitute the council of the incorporated community on the date specified in the regulation;

(b) if a regulation is made under subclause (a)(1), not withstanding any regulation made under section 109,

(1) designate the first enumerator, the first revising officer and the first returning officer and assistants to them or any one or more of them, for the incorporated community.

(2) specify the date by which the preparation and revision of the first voters list shall be completed.

(3) specify the date and time when, and the place where, nominations of candidates for members of the first incorporated community council shall be made,

(4) specify the date and time when elections shall be held for the members of the first council of the incorporated community.

(c) subject to regulations made under section 109, fix the terms of office of the members of the first incorporated community council;

(d) specify the date, time and place of the first meeting of the first incorporated community council;

(e) designate the person to act as clerk of the incorporated community until the incorporated community appoints a clerk;

(f) notwithstanding subsection 89(1), specify the commencement and termination dates of the incorporated community's first fiscal year;

(g) make such additional provisions as in the opinion of the Lieutenant Governor in Council are necessary or advisable for the establishment of the incorporated community and the election or constitution and the operation of its first incorporated community council.

Defining boundaries of Incorporated Community

22(4) A regulation made under subsection (1) may define the boundaries of an incorporated community by reference to a survey based on astronomical bearings, or, if such a survey is not available, to a photogrammetric survey.

APPENDIX A

Information for petitioners:

1. What are the requirements of *The Northern Affairs Act* respecting the petition to incorporate?

   (a) s 21(1) requires a petition signed by 15 or more adult residents of the area or community requesting to be incorporated.

   (b) s 21(2)(a) requires that the document and signatures to be verified by statutory declaration of someone who knows the facts.

   (c) s 21(2)(b) requires that the document shall describe proposed boundaries of the area or community to be incorporated by a map.

2. Principles upon which the attached documentation is prepared are:

   (a) A 6-month residency, within the community or area proposed to be incorporated, prior to the date of signing the petition, consistent with the Northern Manitoba Election Regulation.

   (b) If the Community Council supports the petition, it will provide a covering letter to the petition.

3. Three forms are attached: a) the Council covering letter, b) form of petition and resident signature, and c) form of declaration.

   The manner in which the material should be submitted to the Minister (through the Regional Office) should be:

   (a) the Council cover page (if one present),
   (b) the declaration,
   (c) the petition with signatures (as many pages as necessary), and
   (d) the map of proposed boundaries

4. After receiving the petition, the Minister shall give notice of the petition to the adult residents of the community or area proposed to be incorporated, and shall invite any person objecting to either the petition or the proposed incorporation to submit a written objection with reasons for the objection by a date specified in the notice.

PETITION:

We the undersigned, individually:

(a) Petition the Minister of Aboriginal and Northern Affairs to consider incorporating the Community of _____, and where applicable the surrounding area, as described in the attached map showing the boundaries of the area we propose be incorporated in accordance with *The Northern Affairs Act*;

(b) have examined the attached map showing the proposed boundaries of the area to be incorporated;

(c) state that I am of the full age of 18 years and I am a resident within the community or area to be incorporated, having lived therein at my primary residence, at least six months prior to the date of this petition.

NAME	MAILING ADDRESS	DATE	VERIFIED

Form of DECLARATION to be attached to the petition to incorporate:

I,_____of the Community of _____,
(name)

_____
(occupation)

hereby solemnly declare that:

(a) I am of the full age of 18 years, and have resided in the community or area to be incorporated for _____ years.

(b) I have examined every name on the petition to which this declaration is attached, and every name beside which my initials have been placed is that of an adult resident of the community or area proposed to be incorporated according to the terms of the petition,

(c) the facts presented in this petition and the attached map, are to the best of my knowledge, true and representative of the case.

_____

Declared before me

this _____day of _____, 19__

at _____

_____

A Commissioner for Oaths in and for the

Province of Manitoba. My Commission

expires _____.

Recommended form of cover letter:

Date _____

To the Honourable Minister of Aboriginal and Northern Affairs;

We, the undersigned, being members of the Council of the Community of _____, hereby present a petition made by a number of the residents of the Community of _____ (and where applicable, the surrounding area) requesting the Minister to consider incorporating this Community.

As verified by a statutory declaration attached to the petition, we believe those persons signing the petition are of the full age of 18 years, and have been resident within the area described in the proposed boundary for a period of six months prior to the date of this petition.

We respectfully request the Minister to consider the petition attached.

_____

_____ _____

_____

_____

_____

_____

_____

APPENDIX B

LIST OF BYLAWS RECOMMENDED AND REQUIRED

- Bylaws required to do all or any of the following items, depending upon the specific situation with each community being incorporated:
  - provide for organization of council and its committees,
  - regulate the administrative procedures of council
  - regulate the financial procedures of council
  - appoint the council staff to their positions
  - establish a community budget
  - set the rates for property tax levies
  - establish a land-use policy and regulations

APPENDIX C

Northern Affairs Regional Offices

DAUPHIN REGION

Community Support Services
Northern Affairs
27 - 2nd Avenue S.W., Box 15
Dauphin, Manitoba
R7N 3E5

Phone: 622-2152

SELKIRK REGION

Community Support Services
Northern Affairs
339A Main Street
Selkirk, Manitoba
R1A 1T3

Phone: 785-5089

THOMPSON REGION

Community Support Services
Northern Affairs
Box 27- 59 Elizabeth Dr
Thompson, Manitoba
R8N 1X4

Phone: 677-6788

APPENDIX D

Details of Incorporation Process

Step	Community	Department	Other
Community Petition, per section 21(1) • 15 signatures • proposed boundary	Community generates	Regional office • receives, • prepares briefing note • forwards through channels to minister	
Official acknowledgement of petition		• signed by Minister • indicates staff will work with community to review	
Region begins detailed review and discussion • boundary review • regulation review • by-laws review • finances review • incorporation agreement review	Council presents its resolutions on specific issues as they are discussed	Region coordinates boundary review • applies appropriate standards and prepares department position for approval • identifies what changes may be required in the standard incorporation regulation consistent with community concerns and abilities • reviews community by-laws • finances per Self Reliance or Incorporation agreement	• boundary circulation to gov't departments Where an issue affects another department or agency (e.g. policing) that issue to be reviewed with applicable department

Step	Community	Department	Other
Region prepares time table, subject to community agreement • meetings with council • who informs the public • will there be a referendum	Council proposes time table for community meetings and if desired, community referendum		
		Department Legislative Development Committee (DLDC) identifies all regulations that will require modification	
	Council identifies by-law issues to be dealt with either before or after incorporation		
	Community identifies any issues to be dealt with during the timetable (Can these be dealt with prior to or as part of or after incorporation?)		
	Council holds public meetings		Department meets with other agencies as required on issue by issue basis
	Council enacts appropriate by-laws	DLDC/Region provides draft by-laws	
		DLDC prepares draft regulation	

Step	Community	Department	Other
		Region identifies what additional agreements, if any, are required	
		Region prepares summary briefing to Minister • briefing note • draft Notice of Petition (Minister's response)	
	Council may decide to hold referendum • wording of question • referendum • reporting of result	Region receives community results and makes recommendation to Minister to • proceed, or • not proceed	
Notice of Petition, per section 21(3) and (4) • sent to community (to date all recommendations have been to proceed – if the recommendation is not to proceed this means that community may require more support and working through the process and issues)		• Regional office prepares documents • Minister signs off • Region arranges for responses to be sent to Northern DM's office • Region to summarize and report to minister	
Minister's decision to proceed or not		• DLDC prepares regulation • DLDC prepares Order in Council DLDC prepares cabinet paper	

Step	Community	Department	Other
		Department conducts IPB circulation of draft regulation to inform other departments • Advises of concerns • Action where required	
	Community plans signing event	• Region prepares Minister's Event Briefing Book	
Minister may recommend incorporation • Regulation submitted to LGC • Order in Council • Cabinet paper (?)			
Regulation published in Gazette			
Minister and party attend signing event	Community hosts signing event		